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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,879	04/05/2001	Daniel Patrick Connors	Y OR92000070	3754
21254 7590 09/02/2009 MCGINN INTELLECTUAL PROPERTY LAW GROUP, PLLC 8321 OLD COURTHOUSE ROAD SUITE 200 VIENNA, VA 22182-3817				
EXAMINER				
SHEIKH, ASEAND M				
ART UNIT		PAPER NUMBER		
3627				
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09/02/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

09/825,879

**Applicant(s)**

CONNORS ET AL.

**Examiner**

Asfand M. Sheikh

**Art Unit**

3627

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2, 4-13, 21-24, 26 and 29-33 is/are pending in the application.
- 4a) Of the above claim(s) 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-13, 21-24, 26, 29 and 31-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-2, 4-13, 21-24, 26, 29, 31-33 have been considered but are moot in view of the new ground(s) of rejection.

However the examiner notes the following:

The applicant argues the combination of Swartzel to Johnson and how no person of ordinary skill in the art would have considered combining these disparate reference, absent inexpressible hindsight. The examiner disagrees. The examiner notes Swartzel is related to a system for restocking and repricing merchandise (see at least, col. 3, lines 51-52 and col. 9, lines 9-24). The examiner notes Johnson is related to shelf pricing display. The examiner notes both references fall within the same scope of the applicant's claimed invention. Further Johnson is used as a teaching reference to disclose a shelf label holder comprising an illuminating device with a plurality of illuminating sections which the examiner notes one of ordinary skill in the art would have had the knowledge to combine with Swartzel to obtain a predictable result. Further motivation was provided for the proposed combination; therefore the examiner notes this argument not persuasive.

The applicant argues neither Swartzel nor Johnson disclose "wherein said shelf control unit receives said signal from said transceiver of said hand-held unit and causes a section of said plurality of illuminating sections which corresponds to said item of merchandise to illuminate based on said signal." The examiner disagrees. The examiner notes Swartzel discloses a TSC has a receiver attached to it which can

receive signals from a portable scanner/terminal/printer with RF transceiver (see at least, FIG. 2) which causes the TSC/TAC to cause an LED (e.g. display tag) display on a label to change to flashing "here" to assist during stocking operations (see col. 9, lines 9-24). Further the examiner notes Johnson was added to disclose a shelf label holder comprising an illuminating device with a plurality of illuminating sections (see at least, col. 2, lines 28-30; and col. 3, lines 54-col. 4, line 12). As noted above, one of ordinary skill in the art would have had the knowledge to combine the elements to obtain a predictable result. Further the examiner notes motivation was provided for the proposed combination. Further the examiner notes as interpreted this reads on the applicant's claim; therefore the examiner notes this argument is not persuasive.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 31 is under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The examiner notes the limitation of "wherein said shelf label holder comprises a bar code scanner and said identifying section of said shelf label is inserted into said bar code scanner for scanning said bar code of said identifying

section" is not supported by the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The examiner notes the specification describes that a host controller has a bar code scanner and further the hand held unit has a bar code scanner, however the applicant's specification does not state a shelf label holder has a bar code scanner it states that a shelf label control unit can read a bar code. Therefore these claims stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

Claims 31 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The examiner notes the limitation of "wherein said shelf label holder comprises a bar code scanner and said identifying section of said shelf label is inserted into said bar code scanner for scanning said bar code of said identifying section"" is not supported by the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The examiner notes how can a shelf label holder read a bar code? Therefore these claims stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 31 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The examiner is confused on how a "wherein said shelf label holder comprises a bar code scanner and said identifying section of said shelf label is inserted into said bar code scanner for scanning said bar code of said identifying section" The examiner has interpreted a "shelf label holder" to be holder that holds labels? How can it read a bar code? The examiner will interpret the claim as best understood (e.g. a scanner that can read a bar code and identify a section associated for the bar code).

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims -2, 4-13, 21-24, 26, 29, 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swartzel et al. (US 6,552,663 B2) and Johnson (US 6,624,757 B1).

Claim 1 and 13

Swartzel discloses system for restocking and repricing merchandise (see at least, col. 3, lines 51-52: the examiner notes updating the display information (e.g. with price changes) and col. 9, lines 9-24: the examiner notes the LED (e.g. tag) display may change to flashing "here" to assist during stocking operations), comprising:

a shelf label which displays information regarding plural items of merchandise (see at least, col. 3, lines 26-30: the examiner notes a display tag can display product-related information regarding multiple products);

a shelf label holder which holds said shelf label (see at least, col. 3, lines 16-21: the examiner notes a plurality of display tags disposed along the front rails of display shelves) and comprises an illuminating device including a plurality of illuminating sections corresponding respectively to said plural items of merchandise (see at least, col. 3, lines 16-22: the examiner notes a plurality of LED (e.g. display tag) disposed along the front rails of display shelves and col. 9, lines 9-24: the examiner notes the LED (e.g. display tag) display may change to flashing "here" to assist during stocking

operations) said shelf label holder including a shelf control unit for controlling an illumination of said plurality of illuminating sections, said shelf control unit comprising a transceiver for wirelessly transmitting and receiving signals (see at least, col. 6, lines 55-64: the examiner notes a RF transceiver coupled with the system controller/TAC (e.g. col. 3, lines 37-54) and col. 9, lines 9-24: the examiner notes the LED (e.g. display tag) display may change to flashing "here" to assist during stocking operations with use via a hand held RF unit); and

a hand-held unit comprising (see at least, col. 9, lines 9-24: the examiner notes a hand held RF unit):

an input device for inputting information regarding an item of merchandise of said plural items of merchandise (see at least, col. 9, lines 9-24: the examiner notes scanning a UPC via the hand held RF unit); and

a transceiver which wirelessly transmits a signal to said shelf control unit based on said input information regarding said item of merchandise (see at least, col. 6, lines 55-64 and col. 9, lines 9-24: the examiner notes hand held RF unit would send a signal to the RF unit of the TSC/TAC with respect to input information),

wherein said shelf control unit receives said signal from said transceiver of said hand-held unit and causes a section of said plurality of illuminating sections which corresponds to said item of merchandise to illuminate based on said signal (see at least, col. 3, lines 37-54 and col. 6, lines 55-64 and col. 9, lines 9-24: the examiner notes the LED (e.g. display tag) display may change to flashing "here" to assist during stocking operations).



The examiner notes Swartzel fails to disclose a shelf label holder comprising a singular illuminating device with a plurality of illuminating sections.

However, Johnson discloses a shelf label holder comprising a illuminating device with a plurality of illuminating sections (see at least, col. 2, lines 28-30; and col. 3 line 54-col. 4, line 12: the examiner notes the display strip is an LED display with adjustable display sections and for example in FIG. 2C: the examiner notes the side view of a shelf with an attached display strip).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Swarzel's shelf label holder with multiple tags to include a shelf label holder comprising an illuminating device with a plurality of illuminating sections as taught by Johnson. One of ordinary skill in the art would have been motivated to combine the teachings in order to provide product information and price display device for a retail product shelves which does not have to be relocated as products are relocated within the store (see at least, Johnson, col. 1, lines 55-58).

#### Claim 2

Swartzel discloses further comprising: a host controller for storing merchandise data and planogram data (see at least, col. 3, lines 55-65: the examiner notes a in-store computer and col. 7, line 65-col. 8, line 1: the examiner notes the planogram which identifies position of each product within the store), processing said data and remotely controlling an operation of said hand-held unit and said shelf label holder (see at least,

col. 3, lines 55-65: the examiner notes the in-store updates price information and supplies data to the tags and scanners).

Claim 4

Swartzel discloses wherein an identifying section of said shelf label is inserted into said shelf control unit (see at least, col. 3, lines 36-54: the examiner notes the loop within the TSC would be range of control and include any identifying tag within the range of control for the TSC/TAC therefore this would be the inserted label into the shelf control unit).

Claim 5

Swartzel discloses wherein said shelf control unit further comprises: a receptacle for receiving said identifying section of said shelf label (see at least, col. 3, lines 36-54: the examiner notes the loop within the TSC would be range of control and include any identifying tag within the range of control for the TSC/TAC therefore this would be the inserted label into the shelf control unit), wherein said transceiver of said shelf control unit transmits signals to said and said hand held unit and receiving signals from said host controller and said hand held unit (see at least, col. 3, lines 36-54 and col. 6, lines 55-64 and col. 9, lines 9-24)

Claim 6 and 9

Swartzel discloses wherein said transceiver of said hand-held unit transmits signals to said host controller and said shelf control unit and receives signals from said host

controller and said shelf control unit (see at least, col. 3, lines 36-54); wherein said hand-held further comprises a display device for displaying merchandise data and planogram data (see at least, col. 9, lines 33-32: the examiner notes a display on the hand-held device for merchandise/planogram data (see at least, col. 9, lines 58-65)) and a memory for storing data (see at least, col. 5, lines 55-64: the examiner notes a portable wireless terminal would contain memory), wherein said input devices comprises one of a bar code scanner and key pad (see at least, col. 9, lines 9-33: the examiner notes a UPC is scanned).

#### Claim 7

Swartzel discloses wherein said host controller comprises a memory for storing planogram data and merchandise data (see at least, col. 3, lines 36-54 and col. 7, line 65-col. 8, line 1); a display device for displaying said data (see at least, col. 3, lines 36-54: a computer has a display (e.g. monitor); at least one bar code scanner and keypad for inputting said data (see at least, col. 3, lines 36-54: the examiner notes a computer would have a keyboard); and a transceiver for transmitting signals to said shelf control unit and said hand held unit and receiving signals from said shelf control unit and said hand held unit (see at least, col. 3, lines 36-54: the examiner notes a communications link to send (e.g. supplies) data to scanners and tags

Claim 8

Swartzel discloses wherein said merchandise data comprises vendor information data and inventory data (see at least, col. 4, line, 64-col. 5, line 12: the examiner notes UPC description and general inventory information), and wherein said planogram data comprises correct merchandise shelf locations (see at least, col. 9, lines 9-67).

Claim 10

Swartzel discloses wherein said identifying section comprises at least one of a bar code, a radio frequency identification (RFID) tag and a magnetic identification tag (col. 9, line 9-33: the examiner notes the UPC would be a bar code).

Claim 11

Swartzel discloses wherein said illuminating section comprises at least one of a light-emitting diode, an organic light emitting diode, a liquid crystal display element, a plasma display element, an incandescent light bulb and a light pipe (see at least, col. 9, line 9-33).

Claim 12

Swartzel discloses wherein said signals comprise at least one of a radiowave signal (e.g. wireless) and infrared signal (see at least, col. 9, line 9-33: examiner notes RF is a radio wave).

Claim 21

Swartzel discloses wherein said illuminating device is formed along a longitudinal edge of said shelf label holder (see at least, FIG 1: "20").

Claim 22

Swartzel discloses wherein said illuminating device comprises a plurality of light-emitting diodes (LEDs) (see at least, col. 9, line 9-33).

Claim 23

Swartzel discloses wherein said shelf label holder is connected to one of an upper and lower surface of a shelf for displaying said items of merchandise (see at least, FIG. 1).

Claim 24 and 26

Swartzel discloses wherein said shelf label holder is mounted on a shelf, locations on said shelf corresponding respectively to said plural items of merchandise, and wherein an illuminating section of said plurality of illuminating sections is individually illuminated to indicate a location on said shelf which corresponds to said illuminating section, for one of restocking and repricing of an item of merchandise which corresponds to said location on said shelf (see at least, col. 3, lines 26-30 and col. 3, lines 51-52 and col. 9, lines 9-67).

Swartzel fails to disclose a shelf label holder comprising a singular illuminating device with a plurality of illuminating sections.

However Johnson discloses a shelf label holder comprising a singular illuminating device with a plurality of illuminating sections (see at least, col. 3 line 54-col. 4, line 5: the examiner notes the display strip is an LED display with adjustable display sections and FIG. 2C: the examiner notes the side view of a shelf with an attached display strip).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Swartzel to include a shelf label holder comprising a singular illuminating device with a plurality of illuminating sections as taught by Johnson. One of ordinary skill in the art would have been motivated to combine the teachings in order provide product information and price display device for retail product shelves which does not have to be relocated as products are relocated within the store (see at least, Johnson, col. 1, lines 55-58).

#### Claim 29

The examiner notes Claim 29 is rejected under similar grounds as noted for claims 11-13 and 21-26 and 28-29.

#### Claim 31

Swartzel discloses wherein said information regarding plural items of merchandise is printed on said shelf label (see at least, col. 2, lines 27-47 and col. 3, lines 27-30), and wherein said shelf label holder comprises a bar code scanner and said identifying

section of said shelf label is inserted into said bar code scanner for scanning said bar code of said identifying section (see at least, col. 9, lines 9-67).

Claim 32

Swartzel discloses wherein said input device comprises a bar code scanner which inputs said information regarding said item of merchandise by scanning a universal product code (UPC) on said item of merchandise (see at least, FIG. 2 and col. 9, lines 9-24).

Claim 33

Swartzel discloses wherein said shelf label comprises a paper shelf label, and said hand-held unit further comprises a printer for printing said shelf label (see at least, col. 2, lines 27-47).

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Asfand M. Sheikh whose telephone number is (571)272-1466. The examiner can normally be reached on 9a-5p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan M. Zeender can be reached on (571)272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Asfand M. Sheikh/  
Examiner, Art Unit 3627  
8/28/2009

***/F. Ryan Zeender/  
Supervisory Patent Examiner, Art Unit 3627***